

Director, Division of Enforcement, in February 2008. As Director, Razor is responsible for the overall operation of the Division, including administration and personnel.

4. The Department of Alcoholic Beverage Control (“ABC”), Division of Enforcement consists of about 29 people, including the Director, the Assistant Director, an Investigative Manager, three Investigative Supervisors and about 23 to 24 field investigators. The Division regulates alcohol licensees, and has focused enforcement programs to curb underage drinking and smoking. Investigators are sent to establishments to determine if the licensee is in compliance with ABC laws and regulations.

5. The field investigators enforce all the laws of the Commonwealth, but especially those that deal with tobacco and alcohol. The investigators receive the Police Officer Professional Standards training at the police academy. They also receive 40 hours of in-service training every year. Investigators carry a badge and a gun. Investigators work out of their homes, but their duties require them to go to every county in the state.

6. Operation Zero Tolerance (“OZT”) is a program where Investigative Aides attempt to purchase alcohol in a situation controlled by two investigators. Investigative Aides (“IA’s”) are recruited from schools, friends and family of investigators, and various other means. IA’s are screened to ensure they have no criminal history and are trained by the investigators.

7. Two investigators are always used for an OZT detail because the primary concern is the IA’s safety and well-being.

8. Director Razor identified Appellee Exhibit 1, Section 17.9, Policy and Procedure Manual, Enforcement Division, ABC. The procedure deals with the protocol for the use of IAs for OZT.

9. On November 16, 2011, Investigator Manager Michael Doane notified Director Razor of a complaint against the Appellant regarding inappropriate conduct with an IA. On November 21, 2011, Razor called Ted Sabol, the father of Kayla Sabol, the IA involved in the complaint against the Appellant. Razor then called Kayla Sabol.

10. Razor testified that there had been an earlier complaint regarding the Appellant’s inappropriate conduct towards Kayla Sabol, but that complaint was not forwarded up the ABC chain of command. Razor was not aware of the complaint until November 16, 2011. The Investigator Supervisor involved in that complaint, Randy Overstreet, received a letter of reprimand for failing to forward the complaint up the ABC chain of command.

11. Razor related that the Appellant was interviewed on December 2, 2011, in the ABC offices and he was present. The interview was recorded. Razor stated that, based on his twenty years of experience and training, it was his opinion that the Appellant was being deflective and deceptive in some of his responses.

12. Appellant admitted in the interview that he did not know Kayla, other than having met her during the OZT before having dinner with her at Culver’s. Razor related that, during the

interview, Appellant said he thought she was a lesbian, she wasn't his type, and "also he's known a lot of women and he wouldn't ask to kiss them, he would just go for it."

13. Razor also testified that the Appellant had referred to Kayla as "not being wrapped real tight." During Appellant's interview, he commented she told him of self-mutilation and cuttings. Prior to that interview, Appellant had never told Razor about Kayla Sabol. ABC would definitely want to know about an IA with emotional problems for the protection of the IA and the public.

14. Razor also stated that the investigators working with the IAs are responsible for their safety. Razor has participated in 40 to 50 OZT details. He has never asked an IA to dinner, or gone to dinner with an IA, outside of an OZT. It would be poor judgment to enter into any kind of social interaction with these young kids. They are there to work and there is a difference in age of thirty to forty years.

15. Razor prepared a memorandum regarding the complaint he had received and the events he had been involved in. His memorandum was entered as Appellant's Exhibit #2.

16. Razor also testified concerning the Division of Enforcement's Code of Conduct, Section 12.2 of the Policies and Procedure Manual. The Code of Conduct was in effect in May 2011 and it applies to all sworn personnel. Director Razor stated that the Appellant's conduct was in violation of Subsection 41, Conduct Unbecoming and Subsection 5, Immoral Conduct. Subsection 5 states that:

Investigators shall maintain a level of moral conduct in their personal and business affairs that is in keeping with their oath of office and the Law Enforcement Code of Ethics. Investigators shall not participate in any incident involving moral turpitude, which impairs their ability to perform within their positions or as law enforcement officers, or cause the Alcoholic Beverage Control Department to be brought into disrepute.

17. Subsection 41, Conduct Unbecoming, states that:

Investigators shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the Division. Conduct unbecoming shall include any conduct that brings the Division into disrepute or reflects poorly upon a member of the Division, or impairs the operation or efficiency of the Division or the Investigator.

18. Razor testified that Appellant's conduct could have jeopardized or endangered ABC's entire investigative aide program which is a crucial part of ABC's operation. Without the IA program, ABC's attempts to curb underage drinking would be at risk. Tobacco compliance checks would also have been affected if the IA program was compromised. The program was put in jeopardy by an investigator who took time, while on the clock, to link up with an IA on a non-work-related matter. Razor said he was not sure he would want to use Appellant in the IA program, and that an investigator who can't work with IAs is basically useless. The IA program

allows ABC to investigate tobacco and alcohol and ABC receives grants from various agencies for that purpose.

19. Razor stated that investigators also come into contact with minors, other than IAs, during their work. Under ABC's statute, a minor is someone who is under 21. Investigators come into contact with minors who are inebriated and not in control of themselves. A lot of these minors are young ladies who are vulnerable. Razor related an incident where he was writing a citation to an underage female who had been drinking. She stroked his leg and asked what it would take to get out of the ticket. Razor would be concerned with anyone who would take advantage of that type of situation.

20. Razor testified that he made his verbal recommendation regarding Appellant to the ABC Commissioner. He had worked with Appellant for a long time and,

It's a tough situation to be in. But when I sat back and looked at the totality of the whole circumstances, termination seemed to be the option that was available and should be utilized or exercised.

Razor did not form his opinion on December 2, 2011 – the day of Appellant's interview at ABC, but as the information grew, he was "appalled."

21. Kayla Sabol had referred to Appellant as a "creepy cop." That upset Razor because that is not the image that ABC wants to project. If Appellant were to return to work as an investigator, Razor would be concerned that Appellant would show poor judgment again with an IA. Regardless of his intent, it was poor judgment.

22. Although Kayla Sabol and Appellant are both adults, they are not equals in age or in the working environment; she would be subservient to Appellant. The IA only does what they are told by the investigator.

23. Razor testified that Appellant was very good at filling out his daily report. He was very concise and complete. Razor was surprised that Appellant did not record the 51-minute phone call on his daily activity report.

24. **Kayla Sabol** testified that her birth date is September 24, 1992, and she graduated from Scott County High School in 2010. She lives in Fayette County with her mom, brother, and stepfather. She has never lived on her own. She currently works as a receptionist at Jolie Salon and Day Spa, and also at Bath & Body Works. She goes to school at night and works days and on weekends.

25. Kayla heard about the IA job through Marie Allen, who was dating her father in May 2011. She was eighteen when she first worked as an alcohol IA. Her first work as an IA was in May 2011, after receiving a call from Investigator Ian Thurman. On that first evening as an IA, Thurman picked her up from her house and drove her to Richmond. On the trip to Richmond, Thurman explained what she would be doing on the OZT detail. She understood that

she would be going to liquor stores, gas stations, or restaurants and asking to buy alcohol. If the establishment asked for her birthdate, she was to give her correct birthdate and not to lie.

26. In Richmond, she and Thurman met with Appellant. She had not met Thurman or Appellant prior to that evening. Appellant sat in the front seat, Thurman drove the car and she rode in the back. Appellant went into the stores with her. The work lasted four or five hours. The three of them engaged in a little bit of talk about the job. She also talked with them about beauty school, movies and music. At the end of the work detail, they dropped Appellant off and Thurman drove her home.

27. About a week after the Richmond OZT, Appellant called her. He gave her an idea of about when she would receive her paycheck. After that, they talked about what Kayla was doing and she explained she had stayed home from work that day because she was sick. She told Appellant she had planned to go to the doctor when her mom came home. Appellant then told her that if she felt up to it, they could go get something to eat. They also talked about her dropping out of beauty school due to her poor attendance. The phone call lasted about an hour.

28. She talked to her mom about going to eat with Appellant. She and her mom thought it was just work-related. She didn't want to say "no" to Appellant and have him not want to choose her to work anymore. She met Appellant at Culver's restaurant which is across town from her home. Appellant had decided on the place to eat and paid for the meal. She and Appellant had their meal and stayed in the restaurant after that. She remembered thinking that she was done eating and felt like she had been there forever.

29. Then Appellant told her about a CD that he had that he wanted her to listen to because he thought that she would like it. It seemed like a while that they were in Appellant's car and Kayla had plans with her friend that night and was ready to leave. She did not want to offend Appellant because she thought he might not want her to work again. It was getting dark outside and the restaurant was closed when she told Appellant that she had to leave.

30. While they were in Appellant's car, they talked about her family, music and beauty school. She does not recall telling Appellant anything about cutting herself. She stated that one could look at her arms and legs and she has no marks of harming herself.

31. Kayla noticed the laptop once they got in Appellant's car; she had no idea that he would have a computer in his car. She did not ask him to go to his car to look at Facebook.

32. While in his car, Appellant said she was not to mention to Ian about going out to dinner with him. He told her that he had to go check on a lake cabin later and that it was more than an hour away. "He asked me if I wanted to go," but she didn't and made up like a "really lame excuse as to why I couldn't go."

33. When Kayla told Appellant she had to leave, he asked to drop her off at her car which was not even a foot away. When he pulled up to her car, he said, "Do you think that I could kiss you?" Kayla was "stunned" and said, "Like a friend?" "He like, never mind, forget I said that." Kayla was scared and "sick to her stomach." She was scared because Appellant had

said he was a state police officer, and those are people that you are supposed to trust. She felt that other people would believe Appellant's word over hers.

34. She called her friend on her way home and told her about what had happened. While she was on the phone, Appellant was calling her from his personal phone. She knew it was his personal phone because, while in his car, he had called her phone and told her to store his number in her phone. The phone records produced do not show any such call. In the voicemail that Appellant left Kayla, he told her that he had remembered a movie that he thought she would like. The movie was "Fast Times at Rushmont High."¹ She did not recall that Appellant said anything about her having a brake light or tail light out. She has never had a tail light or brake light out on her vehicle. She did not think Appellant was behind her as she was driving because she kept checking her rearview mirror to make sure he was not behind her. It was only after listening to the message that Sabol could have identified it was from Appellant.

35. Kayla did not really want to tell her family about the incident because she wanted to move on with her life. She did tell her little brother and mother that night. Her little brother eventually told her father. She did not tell her father because it would really upset him.

36. Appellant called Kayla a week or two weeks after the Culver's incident and left her a voicemail where he was singing to her. He sang the chorus to "Layla" by Eric Clapton and changed the lyrics to "Kayla." "Layla, you got me on my knees. Layla, you got me begging, darling please . . ." She was really "creeped out" at this point.

37. Appellant did call her at her new phone number and left her a voice message to call him back. She did not return the call and he called again a day or two later. That voice mail was to the effect that: "You know, if you don't call me back, you're going to be taken off the list to do the jobs, the OZT's."

38. Mike Razor, ABC, called and she told him what had happened and she also spoke to Susan Smith about the matter. Kayla preferred not to let the matter affect her, but her father encouraged her to make a statement to ABC. Kayla spoke with Susan Smith and agreed to appear at a hearing.

39. Kayla's phone number was xxx-xxx-xxxx² at the time of the Culver's meeting. She got a new phone soon after that evening and had a new phone number. She also had another former phone number of xxx-xxx-xxxx. Her mother's cell phone number is xxx-xxx-xxxx. During May 2011, those phone numbers would have all been active.

40. On cross-examination, Kayla testified that she and Appellant did not talk about the possibility of her little brother being an IA for alcohol.

41. **Ian Thurman** testified that he is an Investigator III and has been employed by the Department of Alcoholic Beverage Control for seven years. Before that he was a parole officer

¹ Ms. Sabol is referencing the 1982 film, Fast Times at Ridgemont High.

² Phone numbers are redacted for privacy of the individuals concerned.

for the Department of Probation and Parole for almost five years. He has a bachelor's degree from Berea College.

42. Among his other duties as an investigator, he is also a training officer for new investigators in the agency. He specifically performs training on how to do ABC investigations, such as OZT operations.

43. Thurman first met Appellant in 2005, and began working with him in May 2010. He has had a good working relationship with Appellant. He and Appellant worked together more than anybody else in their section. He has done 15 to 20 OZT details with Appellant. In dividing responsibilities with Appellant on OZT details, Thurman would typically do the paperwork while Appellant would accompany the IA into the premises.

44. Thurman first used Kayla as an IA on May 19, 2011. Typically, he contacts IAs several days in advance of the detail. Kayla was very responsive and eager to work. Thurman estimated the entire detail on May 19, 2011 lasted about six hours due to travel time. In the OZT, Thurman completed the paperwork and Appellant went in the premises with Kayla.

45. Thurman remembers that during the detail with Appellant and Kayla, music became a topic of conversation. There was a conversation about how he and Appellant don't share the same taste in music. Appellant mentioned liking classic rock, or classical music and Kayla preferred that type of music also. He described Kayla as a typical teenage girl, bubbly and joking. She shared a lot of personal information. She did a good job as an IA. She did not violate any of the protocols. Thurman returned Kayla to her home about 10 PM.

46. There are pay sheets for IAs to get paid. Appellee's Exhibit #4 was a pay sheet for Kayla Sabol, May 19, 2011, completed and signed by Thurman. He submitted the pay sheet either that evening or the next morning. It was received by ABC on May 20, 2011.

47. Thurman used Kayla as an IA on June 30, 2011, on an OZT detail with Steve Newell and a new investigator. Thurman was training the new investigator on that detail. There was no mention of Appellant or about Sabol not wanting to work with him during this OZT. Thurman tried to use Kayla again in August – September, 2011. Thurman told her the OZT would be with Appellant.

48. He testified that he told Kayla that Appellant would be working on the OZT. Thurman does not usually tell the IA what other investigators will be working the OZT, but he had heard that he might not want to use Kayla with Appellant because Appellant had asked her to dinner. Kayla agreed to work the OZT, but when he called her to work the detail she told him that she had to work elsewhere that evening.

49. Thurman did become aware of specific allegations against Appellant. Between May and November, 2011, he and Appellant had done 6 to 7 OZTs together. During these months, Appellant never told Thurman that he had called Kayla after the May 19th OZT and that he had a 50-minute conversation with her. Appellant did not tell him in that time that he had gone to dinner with Kayla, nor that he thought she was mentally unstable.

50. After Appellant's termination, he told Thurman about these issues. Thurman was surprised when he found out about those things, including that Kayla had been in Appellant's vehicle. Thurman was surprised because it did not sound like Appellant's character and because he and Appellant shared quite a bit about personal lives. Appellant told Thurman he called Kayla partially because of a pay sheet question and to make sure she had his contact information. He said he had offered to have dinner with Kayla and that during the meal she talked about her father and about using her brother as an IA. He said Kayla wanted to show Appellant a picture of her brother and that was the reason for going out to the vehicle and accessing Facebook. He told Thurman that, if he wanted to kiss someone, he would have just kissed them; he would not have asked for permission.

51. Thurman stated Appellant's determination that Kayla was mentally unstable would have been important to him because they have a lot riding on the IAs and they do not want to put IAs in positions where they cannot handle the responsibility.

52. Thurman is aware that Appellant has a family lake cabin on Herrington Lake, and he had talked about having to mow the grass. Appellant went to the cabin occasionally.

53. Thurman described having a 50 minute conversation, unrelated to work, on a state phone with an IA as "abnormal." He also described it as "abnormal" to have dinner for four hours with an IA that Appellant had met the week before. Thurman was "shocked" to hear that Appellant would do that and it was not a professional thing to do. Appellant did tell Thurman that he had called Kayla and sang "Layla" to her. Thurman has never asked an IA to eat outside of a detail.

54. Thurman stated that pay checks are mailed to IAs.

55. **Michael Doane** is the Investigator Manager for the Division of Enforcement and reports to Assistant Director Josh Crain or Division Director Mike Razor. The Investigator Supervisors report to Doane. He has been involved in law enforcement for 39 years and is currently a sworn peace officer for ABC. He worked for two years in the Internal Affairs Division of the Lexington Police Department. He is a graduate of the internationally recognized training on interviewing and interrogation by Stan Walters.

56. On November 16, 2011, Doane was made aware of allegations against Appellant of inappropriate conduct toward an IA, when Kayla's father, Ted Sabol, contacted Steve Newell, saying she had been informed she was going to be removed from the contact list by Appellant. He prepared a memorandum on November 17, 2011, on the information he had received at that point regarding the allegations. In his memorandum, Doane identified that the alleged conduct could be a violation of the Divisions' policy on "Conduct Unbecoming" or against sexual harassment.

57. On December 2, 2011, Investigator Doane primarily conducted the interview of Appellant because of the training he has had in doing these types of interviews. The interview lasted an hour and nineteen minutes and was recorded.

58. During the interview by Doane, Appellant corroborated several of the details regarding the allegations against him. He corroborated he had called Kayla after meeting her during an OZT and made arrangements to meet her for dinner at Culver's restaurant. He had called her to give her his contact information in case she did not get her check. When questioned by Doane about the phone calls he had made to Kayla, Appellant stated that "I can look at my daily reports, because I usually log all my phone calls on my daily report..." He admitted to talking to Kayla for an hour on the phone on the night he met her at Culver's.

59. During the interview Appellant stated that Kayla was not "wrapped too tight" and had emotional problems. Appellant used vacation time to account for going over his lunch break time. The reason for going out to his car was that Kayla wanted to show Appellant something on Facebook on the computer in his car. He estimated that she was in the car for a half-hour.

60. Doane asked Appellant if he had asked for a kiss from Kayla and Appellant first responded with "Did I ask her for a kiss?" Doane found this to be strange, because the normal reaction would have been "No." As far as saying why the allegation of asking for a kiss was untrue, Appellant told Doane that she was not his type and he thought she was a lesbian.

61. Appellant had indicated during the interview that Kayla was a "cutter" which is a psychological problem where people cut themselves. Doane testified that Appellant had never shared his concerns with him regarding the investigative aid's mental stability. Doane was surprised that Appellant would then call her up for an OZT knowing that she had these mental issues.

62. Doane asked about whether Appellant had asked Kayla for a kiss and he responded, "Now I'll tell you this, I've had some experience with women and I've never asked a woman if I could kiss her. I just go for it." He further stated he would not try to kiss Kayla because his "impression of her is that she may be a lesbian." He did admit to calling Kayla and leaving her a message where he sang "Layla" to her.

63. Appellant said that he would not dispute the phone log but that he would dispute what Kayla was alleging because "...it sounds like some type of sexual harassment." Appellant further stated that he would "debate" whether he was Kayla's supervisor, and that "she's a contract employee..."

64. Appellant told Doane that Kayla was "probably not wrapped too tight. I mean anybody that cuts themselves in my opinion, they're not wrapped too tight. They need help probably."

65. On re-direct, Doane authenticated personal phone records (Appellee Exhibit #6) that Appellant provided to ABC.

66. **Susan Smith** is the Director, Division of Human Resources Management, General Administration and Program Support (GAPS). She oversees all human resources

services for the Public Protection Cabinet, the Labor Cabinet, and the Energy and Environment Cabinet.

67. Smith was advised of allegations against Appellant in November 2011, and she interviewed Kayla Sabol about the allegations on December 2, 2011. The interview was not recorded and Smith did not take notes during the interview. Smith identified Appellee's Exhibit 1 as her memorandum from her interview with Kayla Sabol on December 2, 2011. She composed this memo after the interview. Smith found Kayla to be credible. On the contrary, when Smith interviewed Appellant, she found that his testimony was well-rehearsed. This interview was not recorded and notes were not taken. Smith attempted to summarize this interview, but this was done nineteen days after the interview of December 7, 2011. Some of the entries on Smith's interview report are contrary to Appellant's recording of the interview (Appellant's Exhibit 9). Her memorandums of her interviews with Appellant and with Kayla were included in the OIG report. After interviewing Appellant on December 7, 2011, Smith again interviewed Kayla Sabol by telephone, again without recording it and without taking notes. Kayla Sabol did not make or provide any written statement for the investigation before, during or after her interview(s).

68. **Josh Crain** is the Assistant Director, Enforcement Division, ABC. He testified regarding the telephone records of Appellant that were reviewed by the OIG. He also testified regarding the daily activity report of Appellant from May 26, 2011. Crain noted that there was no mention of a phone call regarding an IA on that report or any mention of a 51-minute phone call. A 51-minute phone call would be something that would be reported in the daily report.

69. **Holly McCoy-Johnson** is the Executive Director, Shared Services, General Administration and Program Support, for the Labor Cabinet, Public Protection Cabinet and the Energy and Environment Cabinet. She is an appointing authority designee for all three cabinets.

70. McCoy-Johnson became aware of allegations of misconduct at ABC in November 2011 through internal memorandums from ABC. She determined that further review was necessary and placed Appellant on special investigative leave. Due to the seriousness of the allegations against Appellant, she felt that he had to be removed from his work with the public while the allegation was investigated.

71. She was aware that Appellant was an ABC investigator responsible for enforcing state alcohol control laws and that he worked with Investigative Aides. Susan Smith interviewed Appellant and Kayla Sabol, and she had the memorandums from Smith. The Office of Inspector General was in transition, but when an Executive Director, OIG, was on board, she turned over the available information to the OIG to establish a timeline and fill in gaps.

72. McCoy-Johnson also spoke with the ABC Board who explained to her that ABC investigators are held to a high level of trust, that investigators are in a sworn position to protect and serve, and have to be trustworthy and above reproach. Investigators testify in various cases. ABC wanted the opportunity to speak with McCoy-Johnson to let her understand very clearly about this higher level of conduct for investigators; that they need to be above reproach; how inappropriate behavior by someone representing ABC can put the entire program at risk because

they have to recruit minors. Integrity was a very big factor. Appellant's ability to continue to do his job in light of those factors weighed very heavily in her decision-making. She determined that there were no other jobs in ABC that Appellant could perform. He could no longer be effective.

73. In forming her intent to dismiss Appellant, McCoy-Johnson met with the agency, reviewed the OIG report, reviewed Susan Smith's notes, reviewed Appellant's personnel file and looked at his entire work history. She also reviewed Appellant's interview at ABC and looked at his evaluations. She determined that Appellant had invited Kayla to dinner with the intent to pursue her as far as he felt it would go. She made a determination that Appellant did ask Kayla for a kiss.

74. McCoy-Johnson found Kayla's account to be quite believable based on the series of events that happened up until the time that Appellant asked for a kiss. Kayla's account was also believable because she did not immediately start saying anything to ABC, but instead spoke with her father who told her that she did not have to work with Appellant.

75. Kayla never claimed that Appellant reached in and kissed her or groped her or anything that could indicate she was making a false allegation. Kayla did not say anything again until Appellant said he would take her off the IA list.

76. She conducted a pre-termination hearing with Appellant and his attorney where Appellant stated that, in hindsight, he had had a serious lapse in judgment. Appellant's attorney requested a suspension, and that Appellant be allowed to keep his state-issued car parked in his driveway. The agency could keep the keys and he would not drive it. Appellant's attorney also asked that he be allowed to retain his state-issued laptop so that he would be able to check his e-mails while on suspension.

77. This indicated to McCoy-Johnson that Appellant was asking the state to help him perpetuate at least a misconception, if not a lie, to his family, friends and people who would be asking him, "Why isn't your car here, what's going on?" She felt like the purpose of that was so that he could cover up the fact that he was suspended. McCoy-Johnson believed that if he would lie to his family, friends and people closest to him, he would have no qualms lying to her to keep his job or to anyone else to keep his job.

78. On cross-examination, McCoy-Johnson testified that she would have written a draft of the intent to dismiss letter. At the time the intent to dismiss letter was signed, February 28, 2012, she would have reviewed the OIG report with all the attached exhibits, to include the memorandums from ABC, Susan Smith's summaries of her interviews with Appellant and with Kayla Sabol. She would have reviewed e-mails that were part of the supporting information.

79. McCoy-Johnson does not recall discussing either the intent to dismiss letter of February 23, 2012, or the dismissal letter of March 13, 2012, with Susan Smith, and does not think that she would have had extensive conversation about it.

80. The dismissal letter did not contain a finding that Appellant retaliated against Kayla by asking that she be removed from the IA list. McCoy-Johnson felt that there was nothing that supported a finding of retaliation.

81. McCoy-Johnson doubted Appellant's credibility and judgment. She feels that investigators have to exhibit good judgment to protect themselves, the agency and the individuals they are working with. She believes that Appellant is held to a higher standard, but that he took advantage of his authority over Kayla. When Kayla said yes to this, another question was posed; when she said yes to that, another question was posed. McCoy-Johnson believes that Appellant was acting in a predatory manner towards Kayla.

82. McCoy-Johnson stated one cannot have people like that in that position of trust and authority working with 18- to 21-year olds or younger, many of them drinking. After meeting with Appellant, she would not want her daughter with him.

83. McCoy-Johnson met with ABC Commissioner Dehner, Director Razor, ABC Administrator Reed and Administrator Stumbo (the ABC Board).

84. McCoy-Johnson understood Marie Allen told Ted Sabol that Kayla did not have to accept calls from Appellant and did not have work with him any longer.

85. On redirect, McCoy-Johnson could not identify any way that Appellant could continue in his duties because investigators have to interact with the public and testify. McCoy-Johnson clarified that her basis for dismissing Appellant was not just for going to dinner with Kayla, but also because of the 51 minute phone call, for taking her to dinner for hours, and for getting her into his car in a dark parking lot. McCoy-Johnson also took into consideration the fact that Appellant called Kayla and left a message where he sang "Layla" to her and substituted the name "Kayla." She felt that it would be disconcerting for Kayla to have someone, whom she barely knew, to do that to her because the song is about a person who is desperately after someone in an "on the edge kind of way" rather than in a friendly way.

86. **Marie Allen**, an Investigator III was called to testify by Appellant. On direct she was asked about her memorandum to Michael Razor regarding a call made to her by Ted Sabol in May 2011. Not being specific, he asked questions concerning his daughter working. She had dated Mr. Sabol previously, but had terminated the relationship and avoided his calls. Allen did send an email to Kayla after Kayla's father contacted her. Kayla did not respond. Allen did not speak with Kayla until the hearing in this matter. She spoke to her supervisor about the conversation she had with Ted Sabol. She also gave Mr. Sabol her supervisor's phone number.

87. Allen's memorandum, Appellant's Exhibit No. 7, states that "I told him (Ted Sabol) that if Kayla was uncomfortable working with Cassity, that when someone called her to work that she could ask them who the other investigator is and if it is Cassity, decline to work that night." Her testimony was the same.

88. Appellant has had highly effective and good evaluations and received an ACE award in 2001. He is considered to be an extremely knowledgeable investigator and his co-workers deemed him to be a “by the book” investigator.

89. **Steve Peyton**, Investigator Manager was called as a witness by Appellant. He was Appellant’s direct supervisor for 7-8 years and they had a good relationship. Peyton stated that he was shocked by the accusations. When asked about Appellant’s meeting Kayla and having her in his car outside of an OZT and having a 2-3 hour meal, he stated that it was poor judgment. It would also be poor judgment to ask an 18-year-old IA for a kiss.

90. Appellant was suspended for a period of thirty (30) working days by letter dated September 21, 1994, for misconduct where he had met two women at a restaurant on an evening after work hours and left with one of them to the hotel where he was staying and on the way there had advised her that he worked for ABC and had showed her his badge. Then he showed her his weapon and allowed her to examine it. At this time the magazine was loaded in the gun. She asked to shoot the weapon, but he told her she could not, and she exited the vehicle with the weapon, and then discharged the weapon into the air.

91. On June 3, 1999, Appellant received a written reprimand for unprofessional and insubordinate behavior over a period of several months.

92. By letter dated August 17, 1999 (Appellee’s Exhibit 10), Appellant received a 10-day suspension from work due to continuing problems with inappropriate, threatening, unprofessional and insubordinate behavior after the written reprimand in June 1999.

93. **Appellant Mark Cassity** testified that regarding the dinner he had with Kayla Sabol, he did not bring that to Ian Thurman’s attention because he “[n]ever thought it was significant enough to talk about.” He testified the 51-minute telephone call was not something that he would normally record on my daily report. He said while they were eating he and Kayla had discussions about her younger brother, who was a tobacco investigative aide. Appellant inquired as to what her brother looked like and she said she had some pictures on Facebook, and they went to Appellant’s vehicle and viewed pictures from her Facebook page of her brother and family.

94. When asked by his attorney what he has denied about the incident on May 26, 2011, he testified that, “I denied that I ever asked the girl for a kiss because that simply is a lie.”

95. Appellant stated he had left Kayla a voice message after they left Culver’s to let her know that she had a “brake light out on her car, tail light, something’ out on her car. Cassity said that during the meal at Culver’s that Kayla talked about “cutting herself.”

96. Appellant related that four or five days later, on May 31st, he was driving while at work and the song “Layla” came on the radio. He then called Kayla and substituted Kayla’s name for “Layla.” and sang part of the song to her. He used his personal cell phone to make that call.

97. On November 15, 2011, Cassity placed a call to Kayla to see if she was available to work an OZT in the next few days. She did not return the call and, on November 16, 2011, Appellant called her again. He again left her a message asking her if she wished to continue in the program or if she wished to be removed and asked her to return the call to let him know. She did not respond to this call and, the next day, Cassity sent an e-mail to Amy Rawlins asking her to remove Kayla from the IA list.

98. Appellant stated that the phone call, from his personal cell phone, on May 31st was when he left a message to ask about whether Kayla had gone to her father's for the cookout over Memorial Day weekend. He believes that the June 3rd phone call was an accident. The June 17th phone call was to let Kayla know that the OZT money was going to be "offline for a few months."

99. The phone calls on May 20th and 25th were to give Kayla his contact information. He called her on May 26th to find out what her schedule was going to be like at beauty school. In reference to Ian Thurman's testimony that Appellant had told Thurman that Cassity wanted to take Kayla off the IA list, Appellant responded, "No, he's just confused."

100. Regarding the interview of December 2, 2011, by Investigator Manager Doane, Appellant stated that Doane "was saying sexual harassment; and I didn't really know what sexual harassment was." He denied that he had ever signed a sexual harassment policy and was not aware of a sexual harassment policy.

101. Appellant denied that the reason he and Kayla went to his car was to listen to music.

102. Appellant could not answer how much of the 51-minute phone call was work related. Appellant stated that he did not remember talking to Kayla about music. Appellant believes that Ian Thurman's testimony about music had been confused with an interaction with some other IA.

103. Appellant agreed that he is a stickler for policy.

104. Appellant did not tell Kayla that he had a lake house and did not know how she knew about it. He never discussed "the lake" with her.

105. Appellant agreed that asking for a kiss would be immoral conduct under ABC policies.

106. Appellant agreed that, in the pre-termination hearing, he said he had engaged in a serious lapse in judgment, but stated that now he does not think it was a serious lapse in judgment. Appellant did not think it was bad judgment to ask an IA, that he had just met the week before, out to dinner outside the scope of an OZT. Nor was it bad judgment to have the IA in his vehicle outside of an OZT. Appellant said that it was "good judgment" to call her up and sing lyrics from "Layla" to her.

107. On the morning of November 17, 2011, Mike Doane instructed Steve Peyton, Appellant's immediate supervisor, to not use Appellant in any further OZT investigations. However, Appellant worked two more OZT's on the nights of November 17 and November 30, 2011. Additionally, he continued to work tobacco enforcement cases with juvenile investigative aides as he had done all summer and fall.

108. In addition, there is an investigation by the office of Inspector General which was not introduced into this record. Several of the documents that purportedly were attached thereto were made part of the record. These include the Smith interview of Cassity, December 7, 2011 (Appellant's Exhibit 3), e-mail from Cassity to Rawlins, November 17, 2011 (Appellee's Exhibit 14), Policy and Procedure Manual, 12.2 Code of Conduct (Appellee's Exhibit 3), Informants and Investigative Aides, 17.9 (Appellee's Exhibit 1), memo of Mike Razor dated November 22, 2011 (Appellant's Exhibit 7), e-mail from Allen to Kayla Sabol dated June 2, 2011 (Appellant's Exhibit 2), and interview of Kayla Sabol by Smith unsigned with a date of December 5, 2011 (Appellant's Exhibit 1 and Appellee's Exhibit 7).

109. The agency did not have Ted Sabol testify, nor was he interviewed. Alan Wagers, the Inspector General, did not testify. He prepared the final investigative report which was dated February 28, 2011.

110. The appointing authority, Holly McCoy-Johnson, testified and indicated she relied on the Inspector General's report to issue the February 28, 2012 intent to dismiss letter. While some of the exhibits were made available to McCoy-Johnson prior to February 28, 2012, she did not have the final report of the Inspector General.

111. McCoy-Johnson did indicate she primarily relied on Susan Smith's information, as well as the OIG report. She did not speak with Kayla Sabol, nor did she speak with Ted Sabol. She did not listen to the recording of Appellant's December 2, 2011 interview, but said she reviewed a summary of this interview, which does not exist.

FINDINGS OF FACT

1. 101 KAR 1:345, states as follows:

101 KAR 1:345. Disciplinary actions.

NECESSITY, FUNCTION, AND CONFORMITY:

KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines and other disciplinary measures. KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This administrative regulation will

replace 101 KAR 1:340 which includes repetition of statutory language which is being repealed.

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal.

(1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 5. Disciplinary Fine.

(1) A disciplinary fine shall not exceed ten (10) days pay. The fine shall be computed on the basis of the employee's current salary.

(2) Prior to imposition of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine.

(3) An employee without status may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(4) When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee. (15 Ky.R. 1717; Am. 2009; eff. 3-8-89.)

2. ABC Policy 12.2, Subsection 5, IMMORAL CONDUCT states:
Investigators shall maintain a level of moral conduct in their personal and business affairs that is in keeping with their oath of office and the Division of Enforcement's Code of Ethics. Investigators shall not participate in any incident involving moral turpitude, which impairs their ability to perform, within their positions or as law enforcement officers, or cause the Alcoholic Beverage Control Department to be brought into disrepute.

3. ABC Policy 12.2, Subsection 41, CONDUCT UNBECOMING states:

Investigators shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the Division. Conduct unbecoming shall include any conduct that brings the Division into disrepute or reflects poorly upon a member of the Division, or impairs the operation or efficiency of the Division or the Investigator.

4. Appellant is a middle-aged man, having worked with the agency for nearly 20 years and beginning such as at least an adult (age 18).

5. Kayla Sabol was 18 years old at the time the incidents which are the basis for the dismissal occurred.

6. Appellant was vested with the authority of a law enforcement officer while Sabol worked with him.

7. Investigative aides work under the direct supervision of officers. Thus, Appellant acted in a supervisory role over Sabol.

8. The Hearing Officer finds that Appellant's admitted actions in talking to Ms. Sabol for 51 minutes on the phone regarding non-work matters, then asking her to dinner, then remaining with her for at least three hours at a restaurant, then inviting her into his state vehicle, and then calling her afterwards and singing Eric Clapton's "Layla" to her displays a lack of good judgment that is necessary to perform his job duties as a sworn peace officer for ABC. Although Appellant did not admit to asking Sabol to go to his lake cabin with him, the Hearing Officer finds that he did, and that this conduct also constitutes a lack of good judgment necessary to perform his duties as a sworn peace officer for ABC.

9. The Hearing Officer finds the testimony of Mike Razor, Ian Thurman, Mike Doane, and Steve Peyton credible as to the requirements of good judgment for their job and that the behavior and statements of Appellant are inconsistent with that requirement and counter to the mission of the agency.

10. The Hearing Officer finds the testimony of Kayla Sabol to be credible, specifically, the portion of her testimony where she states Appellant asked her if he could kiss her while they were in his state vehicle in the parking lot of Culver's on May 26, 2011.

11. The Hearing Officer finds Appellant's statements in his defense to not be credible, specifically, during the December 2, 2011 interview that the reason the allegation that he asked for a kiss from Ms. Sabol was not true because Ms. Sabol was not his type, he thought she was a lesbian, and that if he had wanted to kiss her he would have just leaned over and kissed her.

12. Appellant alleged during the investigation of this matter that Sabol was a cutter, which shows mental instability, yet he never reported such while she was working as an IA. She didn't have cut marks on her at the evidentiary hearing. Thus, his statements are not credible. If he had such suspicions, he was required to report same to protect the credibility of investigations she may have become involved in. Either way, he either lied or displayed lack of good judgment.

13. ABC officers often work with young people whose decision making is impaired due to alcohol use. Their behavior with such individuals must be impeccable in order to remain credible in testimony they provide to Courts or administrative agencies.

14. Appellant's behavior with Ms. Sabol was damaging to his credibility in actions with minors and thus, diminished his ability to carry out his duties.

15. While Smith did not document her interview with Sabol thoroughly, Sabol's testimony at the evidentiary hearing was credible. Thus, any shortcomings on Smith's documentation of her interview are irrelevant.

16. The appointing authority, McCoy-Johnson, is not required to conduct an independent investigation before taking disciplinary action and is entitled to rely on the investigation of others.

17. By letter dated June 3, 1999, Appellant received a written reprimand for unprofessional and insubordinate routine behavior over a period of several months.

18. By letter dated September 21, 1994, Appellant was suspended from duty for 30 working days for lack of good behavior due to his actions which allowed his state-issued gun to come into the possession of a female after work hours and be fired.

19. By letter dated August 17, 1999, Appellant was suspended for 10 working days for inappropriate use of work e-mails, in that he was not opening his e-mails at work.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that Appellant's actions, of calling Sabol and talking to her for 51 minutes regarding non-work matters, of taking her to dinner not related to work, of calling her and singing "Layla" to her, and especially in asking Sabol for a kiss and then denying it, and asking her to go with him to his lake cabin, to be in violation of the ABC's Division of Enforcement's Code of Conduct, Section 12.2 of the Policies and Procedure Manual, Subsections 5 and 41.

2. The Hearing Officer concludes as a matter of law the Appellee proved by a preponderance of the evidence that Appellant did commit the misconduct as charged in the dismissal letter of March 31, 2011.

3. The Hearing Officer concludes as a matter of law that Appellant's actions constitute a lack of good behavior under 101 KAR 1:345.

4. The Hearing Officer concludes as a matter of law that under all of the surrounding circumstances, including his good performance and highly effective performance evaluations, his Ace Award, his old prior disciplinary actions, and the circumstances of this Sabol matter, termination is neither excessive nor erroneous.

5.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **WILLIAM "MARK" CASSITY V. PUBLIC PROTECTION CABINET (APPEAL NO. 2012-083)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Kim Hunt Price** this _____ day of February, 2013.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Gordon Slone
Hon. Paul F. Fauri